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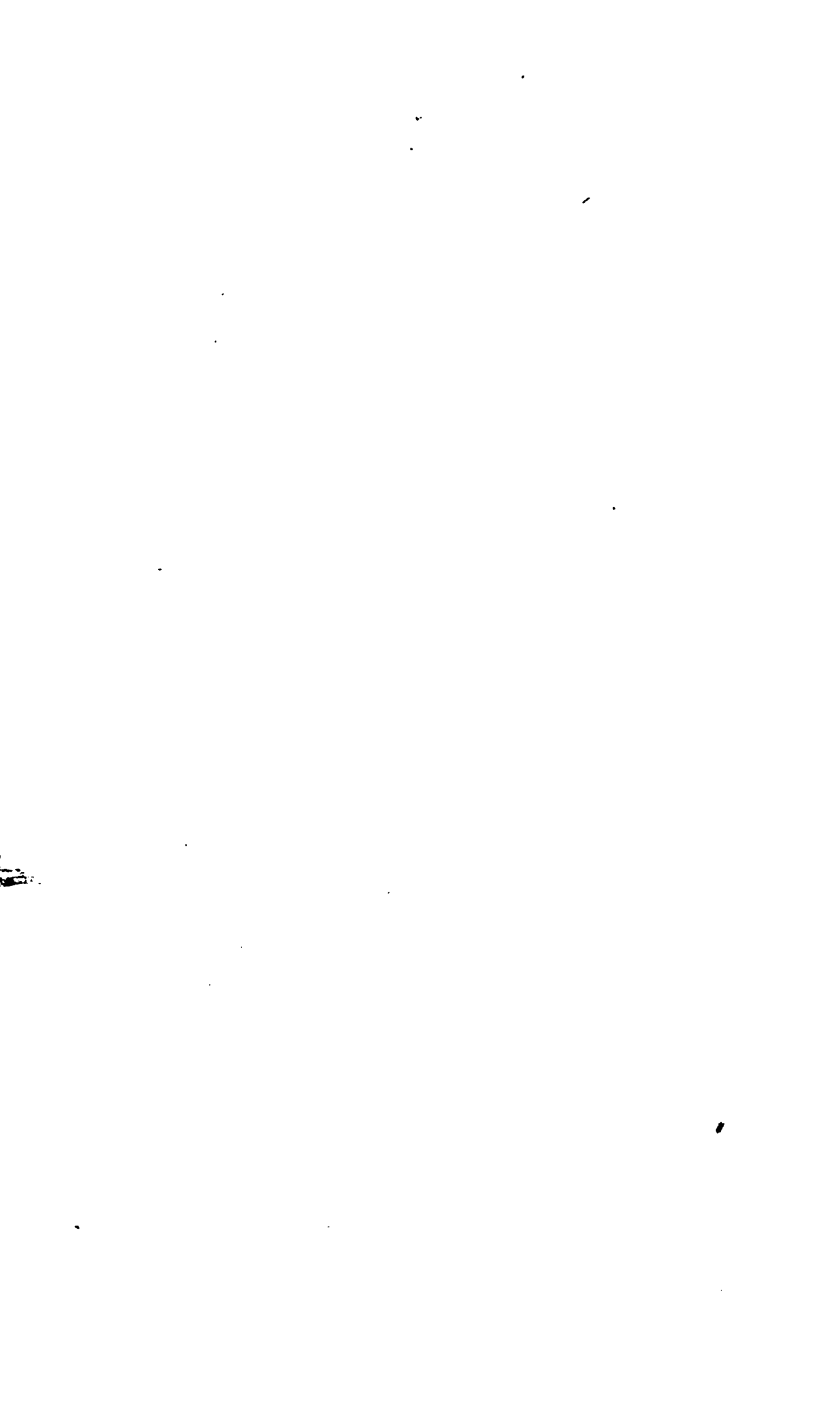
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# National Currency.

By

S. Q. Fisher.

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1864.



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# NATIONAL CURRENCY.

BY

SIDNEY GEORGE FISHER,

AUTHOR OF "THE TRIAL OF THE CONSTITUTION," "THE LAW OF THE TERRITORIES,"  
"RUSTIC RHYMES," ETC.

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Reprinted from the North American Review for July, 1864.

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## NOTICE.

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THE following essay was published in the *North American Review* for July, 1864. While its chief object was to prove the constitutionality of the legal-tender notes issued by the government to meet the exigencies of the war, the argument was intended also to show the necessity of an exclusive national currency, of coin and paper, for the use both of the government and the people.

The opinion is now very generally entertained by men of business, that the system of National banks, proposed by Mr. CHASE, late Secretary of the Treasury, and established by Congress, will, if sustained and properly managed, create such a currency. Efforts are making, here and elsewhere, to induce the State banks to become National banks, and thus fiscal agents of the government and creators of a national currency, so far as that is composed of paper, founded on the credit

of the nation, and therefore of uniform value throughout our widely extended country. Should these efforts be successful, we may hope, ere long, to see State bank notes withdrawn from the channels of circulation, and a national bank paper currency, always and everywhere convertible into coin, take their place.

Certain gentlemen of this City, connected with banking, think the success of this scheme will be promoted by the views expressed in the following article, which is reprinted at their instance.

PHILADELPHIA, October, 1864.

## A NATIONAL CURRENCY.

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1. UNITED STATES TREASURY REPORTS FOR 1861, 1862, 1863.
2. OPINIONS DELIVERED BY THE COURT OF APPEALS OF THE STATE OF NEW YORK, ON THE CONSTITUTIONALITY OF THE ACT OF CONGRESS DECLARING TREASURY NOTES A LEGAL TENDER IN PAYMENT OF DEBTS. ALBANY, 1863.
3. DECISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SUSTAINING THE CONSTITUTIONALITY OF LEGAL-TENDER NOTES. DELIVERED AT ROCHESTER, APRIL 4, 1863.
4. OPINIONS OF HON. J. I. CLARK HARE, AND OF HON. GEORGE SHARSWOOD, OF THE DISTRICT COURT FOR THE CITY AND COUNTY OF PHILADELPHIA, ON THE CONSTITUTIONALITY OF THE ACTS OF CONGRESS OF FEBRUARY 5, 1862, DECLARING UNITED STATES NOTES LAWFUL MONEY AND A LEGAL TENDER.

No political or economical questions have a more immediate bearing on the concerns of daily life, than those which relate to the currency. It is the instrument by which the business of individuals and of government is transacted. A

defective currency is a hinderance to a prosperous career, and adds an oppressive burden to the weight of public misfortune.

The paper money created by the government under the stress of the present war has been generally accepted by the people. It performs all the offices of money as a medium of exchange. It represents all sums from the largest to the smallest. It passes readily from hand to hand, and is of equal value in all parts of the country. Considering the character of the struggle in which we are engaged, this surely may be regarded as a financial achievement of no ordinary merit. But for the currency thus furnished, the Northern States would have afforded a spectacle very different from their present prosperous activity, and the conduct of the war, on the vast scale rendered necessary by the extent of the rebellion, would have been impossible.

This currency has been attacked, not because it has any fault as currency, not because it has failed in any particular to do the work of money, better than gold and silver could do it, better than bank notes could do it, and as well as any national currency ever did that work, but because it is unconstitutional. The government, it is said, has no right to make paper money. It is

restrained by the supreme law from making anything but metallic money.

The legal-tender notes have been issued by hundreds of millions. They have gone into the pockets of the people, and into all the avenues of trade. They are performing all over the country the innumerable exchanges of daily business. It would be a great misfortune, with infinite ramifications of mischief, public and private, if they should be converted into so much waste paper. Sudden loss would fall upon thousands, and a sudden deficiency of currency, with all its ruinous embarrassments, would fall upon all, the government included. Yet waste paper these notes are, if Congress had no power to issue them. The question of their legality, therefore, is of great practical importance to every one.

It has also a theoretical interest, because the principles involved affect essential powers of the government, and indeed the very nature of the Constitution. The question has not yet been presented to the supreme tribunal of the nation, but it is discussed with ability in the opinions placed at the head of this article. These opinions may be regarded as favorable specimens of the manner of reasoning employed by the two

schools into which the expounders of the Constitution are divided. One of these is the liberal school, which ascribes to the government very extensive powers, implied from the language of the Constitution and the purposes of its creation. The other may be termed the narrow school, which would restrain the government to the exercise of those powers only which are expressly granted by the organic law.

The decisions of the courts in all the cases above mentioned were in favor of the constitutionality of the legal-tender notes. In the New York Court of Appeals there were two dissenting opinions out of seven, one only of which two—that of Chief Justice Denio—has been published. In the Supreme Court of New York there was no dissenting voice. In the District Court for the city and county of Philadelphia two of the judges—Stroud and Hare—sustained the legality of the notes, and Judge Sharswood denied it. We have seen only the opinions of Hare and Sharswood. Both of these gentlemen are known to the profession by the learned and valuable works they have contributed to the science of the law. Their opinions in the case referred to display eminent ability, and are marked by the characteristics of the school to

which each respectively belongs. That of Judge Hare is philosophical. His views are broad and general, embracing not the law only, but the causes of the law. The argument of Judge Sharswood is clear, and presented with skill. It is compact, terse, and demonstrative, if the premises on which it is founded be admitted. But it is a verbal argument, supported not by the spirit, but by the letter of the law, and so also is that of Chief Justice Denio, and the result is, not life to the government, but death, "for the letter killeth, but the spirit giveth life." The reasoning of these learned judges reaches a conclusion they did not intend, for it proves, even more clearly than the arguments of the others, that a government exactly limited by the words of a written constitution is no government at all, cannot perform the functions of one, and that such a constitution must either be liberally interpreted, according to its spirit and general intention, or be disregarded.

It may be deemed by many unnecessary to discuss this subject here at all, as it is treated with so much ability in the decisions referred to, and as those decisions were in favor of the legality of the notes. There are, however, some views of the question which do not lie within



the province of a legal argument; and on a matter so important and so delicate in its sensibilities as the currency, it is well that popular opinion should be strengthened by other than technical reasoning. Many of our readers do not often see, or care to see, the opinions of courts, but all are interested in knowing what sort of money the country is to have during the war and after it, and what power the government may rightfully exercise over money. The opinions cited refer only to the legal-tender notes, but the principles which sustain them apply also to the system of banks established by the government for the purpose of creating a national currency. An attempt to show that such a currency is needed by the country and always has been needed, that it is both the duty and the right of the government to furnish it, and that, until the present time, this duty has never been adequately performed, may, perhaps, not be considered inappropriate.

Power over the currency is granted to the government by the Constitution in these words: "Congress shall have power to coin money, and regulate the value thereof, and of foreign coin." It is contended that this language limits the power of Congress to the creation of coined or

metallic money, and that the intention of the framers so to limit it is proved by their debates in the Convention. Let us concede this, for the sake of argument, and what is the result? If, by reason of irresistible causes, the currency actually used by the people and the government is not and cannot be coin, then the government has no power over the money of the country. The restriction imposed by the letter of the law has destroyed a necessary power. If this be so, it follows that it is constitutional to sacrifice the restriction rather than the power.

Mere barter is inconsistent with even the rudest civilization. Men must, therefore, agree upon some commodity which all are willing to receive for the products of their industry. This commodity thus becomes an instrument of exchange, or money. It may be of any material, and has been,—gold, silver, copper, iron, leather, shells, tobacco, paper; that which makes it money is the fact that it is received, by common consent, as the equivalent for the things that men wish to exchange. That it may be so received, however, in an advanced state of society, it must have value, natural or artificial, and must be portable, and capable of subdivision, so as to represent different values. Gold and silver, as

they possess these qualities, and others in an eminent degree, have been used in all ages as a medium of exchange. They are useful in the arts, and have, therefore, intrinsic value; they are scarce, and have, therefore, a large value in a small bulk; they are capable of minute division; they are almost imperishable, and may therefore be preserved for long periods of time, and they are liable to slight fluctuations in value. For these reasons, every one is glad to get them, and because every one is glad to get them, they may be exchanged for anything. They are, therefore, emphatically money, and the term, when used in a strict sense, is applied exclusively to them.

The value of a piece of gold or silver depends on its purity and weight. If at every exchange it were necessary to ascertain these, the utility of the precious metals as money would be greatly diminished. Some certificate of their value is obviously a great convenience, if not a necessity. The state therefore impresses on the metal a stamp, certifying its weight and fineness. To satisfy the needs of commerce there must be pieces of different value, bearing a certain fixed relation to each other. Government establishes this relation. Government enforces contracts,

and itself uses money in its most important transactions. "To coin money and regulate the value thereof, and of foreign coins," and to make the money created by itself a legal tender in payment of debts, is and must be, for all these reasons, the duty and prerogative of government, because it only can accomplish the necessary objects.

Notwithstanding the manifold advantages of gold and silver as a medium of exchange, it was soon discovered, as society advanced, that they could not supply the wants of a commercial community where daily transactions are numerous and the values transferred large. They are cumbrous; a moderate sum is too heavy to be carried about the person, and the expense and risk of transporting large sums across land or water are great. The process of counting coins is laborious, and occupies much time. They are unsafe to keep or to carry, as they tempt robbers. They are liable to be lost by fire, shipwreck, and other accidents. For these reasons a substitute was needed; and unless one had been found, a varied and extensive commerce, either foreign or domestic, would have been impossible. This substitute is paper, and the use of it as a currency instead of metal was almost

as important to the advancement of civilization, as the use of gold and silver was instead of direct barter. By means of paper money, the largest value may be carried, transported to any distance, and counted as easily as the smallest. It is able to pay any sum, however large or however small. Because it has no intrinsic value, by the use of certain precautions, it may be and is rendered far less perishable and destructible than gold and silver. For these reasons it is infinitely superior to gold and silver. It lacks but one quality possessed by these,—that of intrinsic value. One who has a gold or silver dollar has what is itself valuable, if not as money, then as an article of merchandise; one who has a piece of paper representing a thousand dollars has what is in itself of no value at all.

This defect would have prevented the use of paper as money, had not a remedy for it been found. That remedy is credit, the child of good government, of social order, of the arts, of improving science and morals, all tending to create commercial integrity and punctuality. It was at an early period discovered that a written promise, by a responsible party, to pay a certain sum in coin, would be accepted as readily in ex-

change for commodities as the coin itself. The immense superiority of paper over coin for all the purposes of money was immediately appreciated. Written promises began to circulate from hand to hand, from city to city, from nation to nation, wherever there was anything to buy or to sell. Every onward step in civilization, every increase of wealth, every improvement in the arts, every new field of commerce, gave a fresh impulse to the use of this magical instrument, added to its power, and multiplied its services, until at length it banished coin from the larger avenues of trade, and became itself, almost exclusively, the currency of the world, both for governments and the people.

It is needless for our purpose to trace the progress of paper currency, from the first written promise to pay, to its present enormous growth of bills of exchange, private notes, bank notes, bank checks, book accounts, bonds, and public securities, which form the means of payment by which modern business is transacted. It is sufficient to state that it has in these forms almost entirely, except in small retail dealings, superseded the use of coin, which does not now perform five per cent. of the exchanges, either in this country or in England, though in some of

the less commercial nations of Europe it plays a more conspicuous part. Except in very small sums, no one carries coin about him, pays or receives it, sends it to a distance, or keeps it in his house, if he can avoid doing so. Such is the habit of modern English and American society, during periods of peace and security. Paper money is almost the universal money, and the province of coin is narrowed down to furnishing a security against the excessive issue of bank notes, and to supplying small change and the means of occasionally making payment for foreign imports.

These facts have a direct and most important bearing on the question before us.

We have already seen that it is the duty and the prerogative of a government to supply a *currency* to the people, because a currency or medium of exchange is necessary to business, because government alone can supply one, because the government itself requires such a medium, and because there must be a legal mode of paying debts. As this is a necessity, it may be stated as the natural law of all governments, and just so far as any is without the power to meet that necessity, it is without the power to perform the functions of a government.

The character of this law is not altered by the material of which the currency is made. Whether it be of gold or silver or copper or paper, if it be the currency which actually exists, and which by force of controlling circumstances must exist, the duty and the power of the government attach to it, simply because of its existence.

Now the currency almost exclusively used in this country for many years has been paper. Before the present war, when specie was in circulation, probably not more than one per cent. of the vast exchanges of the country, amounting to hundreds of millions daily, was made in coin. Even the national treasury, though professedly based on the principle of a metallic currency, could not perform its functions without resorting to paper in the shape of transfer drafts and notes. All the State governments, all municipal corporations, transacted their business in paper. Paper is the money of the country, both for the government and the people. To make a paper currency, therefore, directly or indirectly to regulate its value, to maintain its stability, and to prevent the abuses and evils to which it is liable, is the duty of the government, and because its duty, its right also.

The foundation of paper currency, as stated



already, is credit, which is the result of public confidence. To create and support that confidence is, therefore, a duty of government, whether the currency be issued by itself, or by others. The term paper currency is here used in its largest sense, and includes all instruments of writing which are evidences of debt, and thus means of payment, as bonds, book accounts, bills of exchange, promissory notes, bank checks and notes. The laws of all civilized nations sustain the credit of these by furnishing means for the recovery of their value, and by providing for their circulation by assignment, indorsement, or mere delivery.

Bank notes are evidences of debt. They are promises to pay on demand a certain sum in coin to the bearer. They require no indorsement, but pass by delivery. They are called paper money, because they perform all the functions of money, differing only from gold and silver in their want of intrinsic value. This defect is practically remedied by their convertibility into gold and silver, at the pleasure of the holder. Bills of credit, issued by the government, are also paper money, if intended to pass as such.

The superiority of bank notes to coin in

cheapness and convenience has caused them to be universally used in commercial countries, and especially in our own, where from various causes a currency easily transmitted to distant places was demanded. Notwithstanding the abuses and dangers to which banks are liable, notwithstanding the heavy calamities they have caused, the vast advantages they offer have made them more and more a necessity as wealth and business increased. They have grown with the growth of the country from three, at the time when the Constitution was made, to over sixteen hundred, their present number. Almost all payments are made in their notes, except the smallest, even when banks are paying coin. Though exchangeable at will for gold or silver, the people prefer them either to pay or to keep. They have become a necessity, they, or some substitute for them, for the increase of business far transcends the power of the precious metals to make the exchanges, and a return to metallic money would reduce commerce to a thousandth part of its present importance. It would be as easy to return to turnpike roads instead of railroads, or to sailing vessels instead of steamers.\*

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\* See the *Ways and Means of Payment*, p. 116, by Stephen Colwell, an instructive and interesting work on currency.

Bank notes have thus become really money. They have become also practically, by the operation of custom and opinion, a legal tender, and never more so than when they are not convertible into gold or silver.

These facts are sufficient to prove that a government which has no power over paper money has no power, in the present state of the commercial world, over money, has no power to furnish a currency either to the people or to itself, and fails, therefore, in an essential attribute of government.

This was soon discovered by ours. The makers of the Constitution were inspired with a dread of paper money by the unfortunate result of that which was issued by the Continental Congress to enable it to carry on the war of independence. Under the influence of this feeling, unable to foresee the future, ignorant of the true nature of currency, (for the science of political economy was then in its infancy,) ignorant of the immense power of paper money for good as well as for evil, they attempted to guard against its dangers by depriving both the National and the State governments of the power to create it. The latter, expressly; the former, it is said, impliedly.

But paper money ere long proved too strong for this construction of the Constitution. It appealed to the people in language that could not be resisted. It offered them rapid wealth, progress, and power. It offered them commerce and manufactures, farms and plantations. It offered to clear the forest, to drain the swamp, to make roads through the Western wilderness, to build ships and cities. It offered to do the work of the government better and more cheaply than anything else could do it. By the disasters its mismanagement produced, it invoked guidance and a knowledge of its uses and powers. It became a necessity both for government and people. As steam does now, it said to both: "I am your faithful, untiring, wonder-working servant. I am also your master, for you cannot do without me. I bestow my treasures only on intellect and knowledge, for though my power is beneficent, it is also dangerous. Study my nature, use me with skill, or beware of explosions and collisions."

It thus became obvious that the natural law which invests every government with power to attain the ends of government, power to exercise its own necessary functions, power to satisfy the wants and demands of the people which can in

no other way be satisfied, must and does invest ours with these powers, whatever the letter of the Constitution may be, and whatever was the intention of its founders.

Paper money has forced both the General and the State governments to recognize its presence and its power; but because the restrictions imposed by the Constitution have been partially effectual, the result has been, from the first, confusion in the currency which it was the object of those restrictions to prevent. A national currency, of uniform value throughout the country, and of positive intrinsic value always, was the object sought by the Constitution. Gold and silver coins would be such a currency. But an exclusively metallic currency was soon found to be impossible. Paper money properly regulated would also be such a currency. But paper money, it was argued, the government is forbidden to supply. Nevertheless, paper money was a necessity. It was a thing the people must and would have, and they got it by a construction of the Constitution which violates its spirit and purpose, though not its letter, and, as usually happens in such cases, has introduced all the evils which the letter was intended to prevent.

The Constitution declares that "no State shall emit bills of credit, or make anything but gold and silver a tender in payment of debts." The object of this provision is manifest. If every State could at pleasure create paper money, as they would necessarily vary as to skill in management, extent of resources, and the business of their people, a currency either for the use of the people of all the States, or of the national government, of uniform value, would be impossible. Nevertheless, the States did virtually emit bills of credit and make them a legal tender. They did not do this directly, and thus evaded the letter of the law, but they did it indirectly, by creating corporations with the exclusive privilege of emitting promissory notes, which speedily filled all the avenues of circulation and became practically a legal tender, during *permitted* suspensions, as well as when they were paid in coin on demand.

The mischievous consequences of this system were soon felt. An uncertain, fluctuating, often worthless paper currency flooded the country. There was no money for the people which was money everywhere, and none for the government. The Constitution intended to provide both, but unluckily those who made it were igno-

rant that paper money growing out of the necessities of commerce, would become a power stronger than the Constitution.

But money the government must have, and money which was really money, of uniform value everywhere throughout our extended empire; and the rapidly increasing business of the country demanded it with a voice that could not be denied. What, then, did the government do? It followed the example of the States. It evaded the letter of the law, but, unlike the States, it did so to preserve its life and spirit. It interpreted the Constitution to meet the iron necessity of the case.

"The Constitution," it was said, "invests the government with the power to establish a *uniform* system of taxation, to regulate commerce between the States, to make war." This power being granted, all means "necessary and proper" to carry it into effect are granted also. Paper money is one of those means,—paper money of uniform value throughout the country. To carry on the business of the government or of the people by means of metallic money is simply impossible. True it is that the Constitution grants to the government the power only to *coin* money and regulate its value. But the govern-

ment may and must do indirectly what it is thus forbidden to do directly. It may create a national bank, founded on its credit, with power to issue notes, which, thus supported, will command universal confidence and become a sound currency of uniform value, both for the people and for the government.

And so it happened. Twice has the government been forced to establish a national bank by reason of the manifold evils of the currency supplied by the States, and on each occasion the object was fully accomplished; a safe and uniform currency was furnished to the government and to the people.

The wisdom of the general intention of the Constitution was thus vindicated. That intention was to furnish a national currency for a government acting immediately upon the people, and for a people scattered over an immense territory, to whose commerce, therefore, a currency of uniform value was all-important. For this purpose the Constitution granted to Congress power to create money and regulate its value, and prohibited that power to the States. But when the Constitution was made, recent experience of the misfortunes caused by the abuse of paper money had inspired a universal dread of



it. The Convention was influenced by this feeling. They could not foresee the commanding part paper money was destined to play in the business of the country, nor that a time would soon come when a "hard money" currency would be wholly impossible, whether for the people or the government. Therefore they attempted to fetter the future by confining the power of the government to the creation of metallic money.

The attempt failed, as all such attempts must, and the government did, in fact, as already stated, get indirectly the power denied to it by the letter of the Constitution. The history of this failure is instructive, and may be told in a few words.

Immediately after the adoption of the Constitution, the wants of the country demanded a currency larger than the precious metals afforded, to supply the place of the bills of credit issued by the States under the Confederacy. Many new banks were chartered, and these, from various causes incident to a country where capital was scarce, resources ample, and the people active and eager, were so badly managed, that in four years they all suspended specie payments; so that a worthless currency, the very

evil the Constitution intended to avert, was brought again upon the people. Some sort of money, both for them and for the government, became necessary, and this money, it was evident, could not be coin, but must be paper. To supply this want, the first Bank of the United States was chartered in 1791. Its object was, as the fiscal agent of the government, to furnish a sound national currency. But the power of Congress to establish a bank for this purpose was doubted, and an elaborate argument by Mr. Hamilton was necessary to prove that this power was implied, because it was necessary to the exercise of all the chief powers, and the attainment of all the legitimate ends of government. The bank answered the purpose for which it was intended. It restored the currency to a healthy condition, and it supplied to the people and to the government a circulating medium composed of paper and coin, which was of equal value throughout the country. As the agent of the government, it performed its exchanges and other business, and furnished a place for the safe-keeping of its treasures.

The charter of the bank expired in 1811. The jealousy of State rights, and dread of a money power under the control of the govern-

ment, prevented its renewal. Immediately the number of State banks increased, and the currency was unduly enlarged. Then came the war of 1812, and in 1814 all the State banks suspended specie payments.

Again the natural laws of trade, as well as the natural laws of government, enforced obedience by the penalties inflicted for their violation. A national currency was imperiously demanded alike by the commerce of the country and by the government, and this want, it was obvious, could be supplied only by the government. Past experience, as well as the example of other nations, especially of England, indicated a national bank as the best instrument yet discovered by which this object could be accomplished. Accordingly, another Bank of the United States was chartered in 1816. Like the former, it was entirely successful. It restored the State banks to a healthy condition, and it furnished, in its own notes, both to the people and to the treasury, a currency of uniform value in every nook and corner of the country, more valuable than gold or silver, and always convertible into gold and silver; while, without expense to the government, it collected and distributed the revenue, and afforded a safe

place of deposit for its treasure. The duty of government was thus adequately performed, and the general intention of the Constitution carried out. The government did, indeed, "coin money," and it also created and "regulated the value" of that sort of money, which, by reason of the increasing wealth and business of the country and the advance of civilization, had usurped, to a great extent; the place of the precious metals.

The charter of the bank expired in 1836. For twenty years it had perfectly fulfilled the purpose for which it was created. It had been managed with entire integrity, with eminent ability, and with signal success. It had gained the confidence of the commerce of the country, foreign and domestic, and of all those classes of the people who are conversant with the use of money, and to whose business good money is of paramount importance. But neither this confidence, nor enlightened opinion, nor the example of other nations, nor the experience of the past, nor the threatened calamities of the future, sufficed to save it. Like its predecessor, it fell a victim to partisan selfishness, popular ignorance, and democratic passion. Its charter was not renewed. Why, it is not pertinent to

our topic to explain; neither would it be a pleasant task, for it would be to tell a story of astonishing folly and wickedness.

The bank was destroyed by the mob, represented and led by General Jackson, himself a concentrated mob. The government abdicated its authority over the currency, and refused to perform its duty to the people. Immediately the retributive action of violated natural law commenced. An overgrowth of State banks sprung up to fill the void created by the destruction of the National Bank. These were managed with very various degrees of honesty and skill, and a formidable power, open to temptation and liable to most dangerous abuse, the very power the Constitution intended to prohibit to the States, was left without guidance or control to the impulses of its own reckless will. Hundreds of State banks, scattered throughout the country, with unlimited privilege to issue "bills of credit," and make them practically a legal tender in payment of debts, many of them created as instruments of fraud, managed often by cliques of speculators to serve their own purposes by creating fluctuations in price, habitually lending money to men without capital or credit, often themselves without capi-

tal,—this was the system which superseded the Bank of the United States. Paper money that could perform the functions of money was as impossible under such a system, as safe steam-boats or railroads are impossible in the hands of ignorance or reckless cupidity. As steam-boilers on our Western waters from time to time exploded, destroying annually hundreds of lives, until Congress passed laws to regulate their construction, so, after the check of the National Bank was withdrawn, the State banks have continued periodically to explode, scattering about them wrecked fortunes and ruined hopes.

Since the fall of the Bank of the United States, the State banks have six times suspended specie payments in a period of twenty-eight years, viz.:

From May 11, 1837, to August 2, 1838.

“ Oct. 9, 1839, to Jan. 15, 1841.

“ Feb. 6, 1841, to March 18, 1842.

“ Sept. 26, 1857, to Feb. 3, 1858.

“ Nov. 23, 1860, to March 9, 1861.

“ Dec. 30, 1861, to the present day.

Each of these suspensions, except the last, caused by the war, was preceded by an inflated currency, by high prices, by over-trading, by riotous speculation, and by a commercial panic. Each was accompanied by disastrous losses to

individuals. Notwithstanding the lesson afforded by each catastrophe, the same career of folly and extravagance was repeated.

More deplorable, however, than the loss of property and the unhappiness it produces, is the gambling spirit of speculation created and stimulated by the constant fluctuation in prices which is the necessary result of giving to hundreds of corporations unlimited and irresponsible power over the currency. They represent and share the passion for rapid gain which their operations encourage. They increase their profits by increasing their circulation. Every expansion, by raising prices, causes a demand for another. At length the day of reckoning comes. Alarm is excited. The banks, to avoid suspension, contract their loans and their issues. Money becomes scarce. Merchants fail because they cannot get it. A universal panic ensues, the banks suspend, and the currency in the hands of the people varies in value according to the character of the several banks by which it is issued, and such credit as it has is local. It is, therefore, unfit as an instrument of exchange between distant parts of the country, and performs very imperfectly the functions of money in any.

The constant alternation of high prices and of low prices, caused by the expansion and contraction of the currency, while it enlarges the class of stock-speculators, affects the character of all business. It makes it dangerous. It invests it with the power of rapid gains, and attaches to it the risk of sudden and unforeseen loss. These are the characteristics of gambling, and it matters not whether the implements of the game be cards and dice, or lots and stocks, cotton and dry goods. The reckless and extravagant spirit of gambling influences to a great extent all the pursuits of our business, and if much of this has been the result of the vast undeveloped resources of the country, constantly tempting enterprise to bold adventure, more of it and the worst of it has been caused by the abuse of the terrible power of paper money.

This short history may serve to show how the government has performed its duty of furnishing a currency to the people. It has indeed "coined money" during the whole period of its existence, but from 1788, when its action began, to 1862, when the act creating the legal-tender notes was passed, only while a national bank was in operation, that is to say, only for forty years out of seventy-four, has it attempted to create and



regulate that which was practically and really the money of commerce and of daily business. For thirty-four years, nearly one-half of its constitutional life, the government has left the people to get along as best they could with the bills of credit which, under the name of bank notes, were issued by authority of the States, with what results we have seen. The forty years of a national bank were years of a sound and uniform currency, proving that the difficulty lies, not in the subject itself or in want of power in the government, but in other causes that fetter its action.

But money is necessary, not to the people only, but to the government. To provide money for the people is a duty; to provide money for itself is indispensable to all its operations. Before the first national bank was established, in 1791, the government was obliged to employ State banks as its fiscal agents, and to pay and receive their notes. From 1811, when the charter of that bank expired, to 1816, when another national bank was established, the treasury was reduced to the same necessity; and during each period suffered such loss, risk, and inconvenience for want of money, notwithstanding the power of the government to "coin money," that it was



forced to provide itself with a different sort of currency. When in 1833 the public deposits were removed from the last Bank of the United States, again the government resorted to the agency of State banks, and was obliged to use the money furnished by these, instead of the admirable currency which had been recklessly destroyed. Certain institutions were selected for the purpose, and the popular name they received, "pet banks," sufficiently indicates the motives which directed the choice and the purposes they were expected to serve, while the list above given of the suspensions of the State banks from 1837 to 1841 shows the sort of money furnished by them to the government.

The evil was intolerable. That panics and suspensions, a money market alternately "tight" and "easy," the crash of credit and the failure of merchants, periodically overspread the country with all the evils that the Constitution intended to avert when it forbade the States to emit bills of credit or make anything but gold and silver a legal tender, was not the point. Let the States and the people take care of themselves, was the cry, and let the government take care of itself. But how to do this was the question. State banks always had failed to serve

the needs of the government, a United States bank had succeeded always. But against the latter the popular sentiment of the country was too strong and decided to be resisted. Neither party, however urgent the need, dared to propose another "representative of the moneyed aristocracy," another "monster of tyranny and corruption," another "political engine," another "gigantic monopoly," to make the "rich richer, and the poor poorer," to control the ballot-box and to subvert the liberties of the people. These were the party cries of the day, to whose ferocious discord the multitude had long been marshalled and marched to victory. They were in some degree justified by the conduct of the Bank in the later part of its career. It defended itself when unjustly attacked; it became the subject of a fierce party contest; passions were roused by the struggle, the temptation to abuse power was strong, opportunity incessant, the stake large, the triumph of victory would be sweet, the loss and mortification of defeat hard to bear. The Bank was attacked because it refused to become a partisan tool in the hands of the administration. Because of that attack it did become, almost necessarily indeed, the political engine of a party opposed to that administra-

tion. As the battle waxed in fury, it grew almost as reckless and unscrupulous as its adversary, and it did not fall with dignity. It lost all, honor included.

Thinking men may perhaps justly infer from such a history, that a national bank is impossible under our form of government. An attempt will surely be made by a party in power to convert it into an instrument for party purposes, and it will become such whether it yields to or resists the attempt: if it yields, the administration will use it; if it resists, it will be attacked, and then the opposition will use it. The Bank of England was founded in 1694. From that time to this it has grown in strength, in completeness of organization, in diversity of action, in credit and usefulness. During that long period of one hundred and seventy years, it has been the fiscal agent of the government, transacted all its business, and furnished both to it and to the people a sound and satisfactory currency in peace and war. Its notes have always been the money of the government and of the people; since 1834 they have been a legal tender in payment of debts, except those of the bank, and always at par with gold or above it, except during England's great war with France and



Napoleon, when for twenty-five years it suspended specie payments. Whilst the war lasted, both the government and the people were amply supplied with money acceptable to both, viz., the notes of the bank, which varied in value from par to thirty per cent. discount, which for a short time only fell so low as that, but were usually from fifteen to twenty per cent., and which rose to four per cent. at the close of the war, when the bank resumed specie payments, having carried the finances of the nation and the business of the people through an unprecedented contest so successfully, that both had prospered during the war as they had never before prospered during peace. This wonderful institution has grown and flourished through foreign war and civil war and revolution, keeping pace with the growth of English commerce and power; during the whole of its history, it has been connected with the government, yet it has never become a party engine or participated in party strife; it has been managed with entire integrity and with consummate ability, and to-day its credit is as firm, its wealth greater, its usefulness more extensive than ever.

Immediately after the fall of the Bank of the United States, extravagant overtrading, stimu-

lated by improvident issues of State bank paper, caused the disastrous panic, crash, and suspension of 1837. The "pet banks," which had received the deposits, encouraged by their possession to undue expansion, were unable to return them. Irredeemable bank notes became again the "money" of the government. What was to be done? Better money, "hard money," if possible, government must have. A safe place for the deposits was equally necessary. How to get either was a difficult question. In this dilemma a special session of Congress was summoned in September, 1837, and Mr. Van Buren, the President, addressed to it a message, which, read by the light of subsequent experience, is very instructive. It was indeed surprising, as he said, that at a time of profound peace, and in the midst of unbounded prosperity, a government free from debt and with a surplus revenue, should suddenly find itself without money, and a country teeming with the wealth of intelligent enterprise and successful industry should be covered with the wrecks of ruined fortunes. The cause of the disaster, he thought, was paper money, issued without restraint by banks, constantly tempted to over-issue by their own interest, and by the demands of rash speculation

and the wild spirit of adventure natural to men trading on borrowed capital. The obvious remedy was hard money, a return to the currency which the Constitution intended to provide. A national bank had been tried twice. To try it again would be impossible, "because a majority of the people are irreconcilably opposed to that measure; they consider such a concentration of power dangerous to their liberties; and many of them regard it as a violation of the Constitution." The State banks had been tried three times, and had wholly and disastrously failed. The only thing, therefore, left for the government to do, was to collect the revenue in coin, to pay it out in coin, and to keep its treasures in its own vaults under the care of its own officers. In other words, to provide money for itself, and leave the State bank notes, with all their risks and evils, for the people. These notes had become the currency of the people by their own choice.

"At the time when the Constitution was framed," says Mr. Van Buren, "there were but three or four banks in the United States; and had the extension of the banking system, and the evils growing out of it, been foreseen, they would probably have been specially guarded

against. The same policy which led to the prohibition of bills of credit, by the States, would doubtless in that event have interdicted also their issue as currency in any other form. The Constitution, however, contains no such prohibition; and since the States have exercised for nearly half a century the power to regulate the business of banking, it is not to be expected that it will be abandoned."

Doubtless the framers of the Constitution would have prohibited bills of credit issued by the States in the shape of bank notes, could they have foreseen the disastrous consequences of paper money poured forth without limit by hundreds of unguided, unrestrained, and irresponsible corporations, each acting for its own interest; and doubtless, too, they would have conferred on the central government power not to "coin" money merely, but to create for itself and for the people a paper currency also, and regulate the value thereof, could they have foreseen that paper was to become practically the circulating medium of commerce in its largest as well as its smallest exchanges, and therefore essential to both the government and people. Their object was to provide a sound, uniform, and exclusive *national currency*, which, as they



were not gifted with prophetic power, they supposed might consist of gold and silver. They therefore gave to the general government authority to coin gold and silver, and denied this authority to the States, particularly prohibiting them from issuing any paper currency at all, or making anything but gold and silver a legal tender. And how was this wise plan defeated? By the narrow construction of the Constitution according to lawyer's logic, instead of statesman's logic. By the letter of the law, bank notes are not bills of credit emitted by the States; by the letter of the law, Congress has power merely to "coin money," that is, to make metallic money only.

Mr. Van Buren's advice was followed, but not immediately. The Independent Treasury system was established in 1846. Meanwhile paper money had again exploded in February, 1841, the banks suspending specie payments till March, 1842. From 1846 to 1862, the government, divorced at length from banks, divorced from the business of the people too, collected its revenue in its own coin, kept it in its own vaults, and paid its creditors in coin, assisted to some extent by a paper money of its own, treasury notes, and drafts, neither of which per-

formed the part of a circulating medium for the country. It has been said by some that this accumulation and pouring forth of coin strengthened the paper currency in the hands of the people; and by others, that the keeping of a large mass of gold and silver unproductive was an unnecessary loss to commerce. Be that as it may, the benefit, if any, was incidental to the system, and not its object, which was to provide a currency for the government only, leaving the people to manage as best they could with the bills of credit emitted by the States. These were regarded as a constitutional currency, notwithstanding their prohibition by the Constitution, and there could be no doubt that the metallic money, coined, collected, safely kept and paid out by the government, was constitutional also. The scheme of the Constitution was thus, it seems, constitutionally defeated. A national currency, which the Constitution intended to secure, was denied to the nation, while a State paper currency, the very thing which the Constitution intended to prevent, was imposed upon the people. This was done by the narrow school of constitutional lawyers and the "hard money" school of politicians.

Instructed by disastrous experience, many of

the States began in 1838 to try various plans to regulate the paper money issued by the banks, to prevent imprudent expansion, and to provide some security for their notes, even in case of suspension. The States thus attempted to do the duty left undone by the government. But all their efforts could not prevent the suspension of 1841, nor could these efforts and the influence of the Independent Treasury prevent the terrible crash of 1857, more calamitous and destructive than any that had preceded it, and which shattered in an instant the hopes and fortunes of thousands.

A wonderful thing indeed is this machine called paper money. Useful and dangerous as steam, or fire, or gunpowder, it must not be trifled with by careless or ignorant hands; but to those who know its laws and obey them, it is full of blessing.

The Independent Treasury existed from 1846 to 1862. It was well managed, and answered the purpose for which it was intended. It kept the deposits and transacted the business of the government as safely, though not so cheaply and conveniently, as the Bank of the United States had done. It supplied a perfectly sound currency for the use of the government; the Bank

furnished one as good for the people also. Considering, however, that a national bank had become an impossibility, the Independent Treasury was successful. It did its appointed work, performing its functions with ease in a country alive with industry, teeming with riches, overspread and underlaid with boundless sources of wealth ever tempting to bold enterprise,—with a people so full of exuberant life and elastic power, that they made no more of bank explosions and money panics than a boy does of a tumble on the ice. It was successful during prosperity and peace. At length came war,—something very different from the explosion of banks and collapses in the money-market,—as different as an earthquake from an ordinary storm. Suddenly, in 1861, the flames of war burst forth in our hitherto tranquil and happy country, and it was soon apparent that they would spread far and burn long.

Money has been called the “sinews of war,” which cannot be carried on without it. It was especially necessary to our government, for the leading Rebels, plotting and intending treason, had used the official authority with which they were intrusted, before the veil was lifted, to plunder the treasury and the arsenals. Large

sums were needed at once, and the revenue of years, perhaps of many years, must be anticipated. The usual expedient in such cases is to borrow. But what could our government borrow? The country was full of capital which its owners were more than willing to lend. It was full of material wealth,—wool, iron, coal, leather, grain, cattle, horses, stores of all kinds,—which the people were eager to sell. It was full of mills, factories, and workshops, as well as of skilled workmen, who were ready to put forth their energies to meet the crisis. It was full of brave, patriotic men, burning to fight in defence of their outraged flag. The country had everything necessary for war in profusion, except one thing, without which all others are useless. It had no money. Neither the government nor the people had any money. There was, indeed, a certain amount of coin, and a large amount of bank-note currency. But the former was wholly insufficient in quantity, and speedily disappeared, as it always does in times of public danger and general alarm, while the latter was deficient in quality. It had failed too often in peace to be tried in the stress of a great war.\*

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\* See Treasury Report of 1862, p. 7, on the impossibility of resorting to the use of State bank notes.

The banks suspended from November, 1860, to March, 1861. Actual hostilities began in April, 1861. The banks came forward to the aid of the government, lent it one hundred and fifty millions in specie, and immediately suspended, December 30, 1861. The suspension still continues.

The one hundred and fifty millions were soon spent, and were immediately withdrawn from the channels of circulation. Irredeemable bank notes of various shades of local credit did not suit the government. It required a currency of uniform value in all parts of the country. Such a currency did not exist. How, then, could the government borrow? Obviously it must first create a currency, and then borrow it. It must create some sort of money which the people could receive in payment for their labor and the products of their industry, which they could pay as taxes, which could represent the capital they were willing to lend to the nation.

The government yielded to this necessity. It issued its own notes, four hundred millions of them, payable at no definite period, receivable for all loans made to the United States, and a legal tender for all debts, public and private, except interest on those loans and duties on im-

ports. These provisions give an actual value to the notes superior to that of bank notes, so that, being preferred by the people, they may take the place of the latter and thus become a national currency. They are rapidly becoming the national currency. They are like the notes of a suspended bank in one respect,—they are promises to pay coin when the promisor is able. In all other respects they differ from bank notes. They are issued by a sovereign power, which receives them in payment for debts due to it, and obliges individuals to receive them in like manner. They are issued on the credit of the nation, not on that of a private corporation. A vast domain, the richest in the world, in *gold* and *silver*, in coal and iron, in cotton and tobacco, in wheat and corn, in stone and timber, in flocks and herds, is mortgaged to secure them. Thirty millions of people of the most industrious, energetic, and enterprising race on earth have indorsed them. If thus supported, they are the best currency that ever a nation had,—better than gold and silver,—such a currency as was never dreamed of in the philosophy of the framers of the Constitution.

Why, then, are they not at par with gold and

silver? They are now\* (May, 1864) much lower than the notes of the Bank of England were at any time during her war of twenty-five years with revolutionary France and with Napoleon. The reason is, that ours is not a foreign, but a civil war, waged against the very existence of the nation. Should the nation be destroyed, its promises to pay when it is able would become worthless, and so subtle, malignant, determined, and powerful are its enemies, North and South, and so numerous and difficult are the problems to be solved by the government, that no man can predict when and how the war will end. No one in England believed that a failure to crush the power of Napoleon would destroy the British empire, and overturn all order, law, and government. Every man in America knows that, unless the Rebels, South and North, open and covert, can be put down, this American empire of ours will certainly be divided, most probably be shattered into fragments, and that, in the strife of sections and factions which such a catastrophe would cause, treasury notes would become worthless, and a good deal else more valuable would become worthless too. On the

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\* One dollar in gold is worth \$1.80 in paper.



other hand, it is becoming daily more apparent that the Northern people have power to conquer the South, that their intelligence is able to cope with the difficult questions of the future, and dispose of them, as they have disposed of those of the past,—that they have determined again to be a nation, and to have a country, and that with such leaders as Lincoln and Chase they are likely to execute their purpose.

These views of the future prevail according to the opinions and passions, the hopes and fears of parties and sections, and are influenced constantly by the vicissitudes of the contest. A Union victory on a battle-field or at the polls depresses the price of gold; a Rebel victory in the South or at a Northern election sends it up. Jefferson Davis, the Southern armies, Generals Longstreet and Lee, and the Northern Democrats are the bulls of the gold market; Lincoln, Chase, Grant, Sherman, and Meade, our brave troops, and the loyal and patriotic men of the North are the bears. Gold will fall as they rise in power, and the legal-tender notes, if skillfully managed by the treasury, as the great war draws to a successful close, will increase in value, and when it ends be at par everywhere, and, like the notes of the Bank of the United

States, sometimes, and in some places, above par.

The government was thus forced, by inexorable necessity, to provide a currency for the people and for itself. Paper money proved too strong for the narrow school, too strong for the Constitution, if the doctrines of that school be correct. The fact was revealed more clearly than ever, that paper money is really the money of the people, and must be the money of the government also. To deny to it, therefore, the power to create and regulate the value of a paper currency, was to deny all power over money; was to say that it should not furnish good money to the people when they most needed it, or for its own use, when good money was absolutely necessary for the defence of the nation.

A government thus weak where and when strength is essential, is no government at all. It lacks what every government must possess or perish,—sovereign power to attain its legitimate objects. These objects are, as the Constitution expresses it, “the common defence and general welfare.” To secure these, men unite and form communities and nations, and invest governments, whatever may be their form, with the

absolute despotic power which every people must of necessity possess over their own destiny. They do this because they cannot themselves originate and execute the measures required to accomplish these objects, and because less than sovereign power is not sufficient. The power of the people over these measures consists in their privilege of choosing the persons to whom their power is intrusted; and according to the number of the people who possess this privilege, and the number of those invested with power over whom they exercise it, are they more or less a free people. A government so restricted by its organic law, that it cannot do for its people things essential to their welfare, yet which they cannot do for themselves,—that cannot defend either itself, or the nation of which it is the trustee, from destruction,—is a contradiction, a falsehood; and when the hour of trial comes, it will do one of two things,—it will either vanish and give place to something that has life and reality, or it will take the necessary power and use it, leaving it to the people afterward to say whether it has done well or ill.

Such a government was our old Confederacy. It professed to be a union, but was merely a league of States. It professed to form a nation,

but had no national authority. The States had too much power, the federal government too little. It acted upon States, not upon individuals; by means of States, not by its own officers. It could not command; it could only request, and possessed no authority to coerce compliance. It was not really a government, for it could not govern; it was not a power, for the essential attribute of power is the ability to enforce obedience. It was a sham, an unnatural, unreal thing,—a machine that could not do its work; and it was thrown aside for one that could, as mail-coaches have been thrown aside for railway trains.

The new machine was our present Constitution. The Convention that made it, in order to create “a more perfect union,” planned a national government for national purposes, acting directly on individuals and property by means of its own officers, and supreme within its sphere, leaving to the States State power for local purposes, exclusive and supreme also within its sphere. This is the theory which the Convention intended to carry out; and the Constitution is nothing more than the written plan of the machine called government, by which this theory was to be made effective in practice.

A government must have power to attain its objects, just as a steam engine must have power in order to work. Now power, whether of the people or of steam, has its own laws, which cannot be altered by any human contrivance, and those laws must be obeyed by those who use it, under penalty of failure, or worse than failure, for disobedience. The intention of the Convention was to create at once a nation and a confederacy,\* and their model was the British empire, which is both a confederacy and a nation. They invested, therefore, a central or national government with the power of the people of the nation, for general or national purposes, and State governments with the power of the people of each State, for local purposes, with a reservation to the people and to the States of all power not thus granted to the central government. Whether this reservation be possible, whether it does not violate the natural laws of power, is an important question not now to be discussed.

It is evident that the successful working of this machine must depend upon the proper distribution of power to its several parts. To maintain its nice balance and harmonious action, each part must move freely within its ap-

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\* Federalist, No. 39.

propriate sphere. If the Convention made a mistake in giving too much central or too much local power, their plan will fail unless the defect can be remedied. It is obvious also that, as this machine is to operate upon human interests which are always changing, by means of human agencies which are equally changeable, nothing short of supernatural wisdom could have enabled the Convention to invent a machine that would provide for the unknown exigencies of the future, or to foresee whether limitations imposed might not become absurd, or things by them regarded as local might not become national in their character, and thus be withdrawn from State power into the province of national power, as has happened in the case of slavery. Regarded at first as local in its nature, it afterward grew to be a gigantic interest and influence, affecting all other interests, claiming to rule the nation, and, failing in that, attempting to destroy it. Rightfully, therefore, does the central power consider slavery as now within its proper sphere, take possession of it, and govern it.

The Constitution is not, nor can it be, more than a written plan or description of a government, intended to reduce to fact and practice the theory of national and federal, or, in other

words, central and local power, which its makers desired to establish. It is an enumeration or list of the powers which each must have, to perform its part. If they have left any out of this list essential to the ends of the government, or of that system which they sought to found, if they have so restricted necessary power as to render it inefficient, if they have not given, or have prohibited, to the States privileges essential to their functions, it is for us to correct their errors; for the Constitution belongs to us, the people of 1864, not to our ancestors of 1787, who are resting in their quiet graves. They were too wise to pretend to be infallible. They knew that mistakes there might be in the letter of their written plan, but that there could be none in the scope, spirit, and intention of that plan. Ample power they intended to grant to the general government for national objects, restricted power to the States for local objects. Let this be done, let this essential, primary, dominant law of the Constitution be obeyed, and it will stand through all the changes of the future. Therefore into their list of particulars, or "express powers," as the narrow school phrase it, they introduced general terms, by which the letter of the law may be rendered pliable to its

spirit, as the exigency of changing circumstances or errors discovered by experience may require. The national government is "to provide for the *common* defence and *general* welfare of the *United States*." How? By exercising all the powers herein granted. But suppose some necessary powers or power which time shall disclose to be necessary, through inadvertence or error or ignorance, have not been granted, or have been unwisely restricted. Shall the letter of the law prevail against its spirit, shall it kill the life of the law and of the government created by the law, which life is its ability to attain its purposes? The Constitution answers these questions. "Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and *all other powers* vested by this Constitution in the *government of the United States*, or in any department or officer thereof."

These words have received too narrow a construction, even from the liberal school. They have been interpreted to mean a grant of authority to use all means conducive to the execution of enumerated powers. But this reading gives no effect to the important words, "all other powers vested by this Constitution in the gov-



ernment of the United States." What are those *other* powers? Obviously, such as must of necessity belong to a government, but which are not, or may not be, expressly granted by this Constitution, though necessarily implied by it, and therefore vested in the government. No other construction will satisfy the words, for those immediately preceding them, "the foregoing powers," and those immediately following, "or in any department or officer thereof," include all the enumerated powers. These are distributed by the Constitution, severally to the Legislature, the Executive, the Judiciary; nowhere else are powers vested in the "government of the United States," as a whole, as a unit, mentioned. Is it not, therefore, a fair interpretation of these words to say that, as they refer to powers existing, but not expressly granted, they refer to something real, to such powers as time may reveal to be necessary to maintain and perfect the plan or theory of government designed by the Constitution, and are therefore vested in the government by the Constitution, whether expressly mentioned or not?

One power which every government of a civilized people must possess is that of providing both for itself and for the people a circulating

medium, for the simple reason that it is a matter of absolute necessity to both, which the government alone can supply. A circulating medium which the people do in fact use, which both they and the government, by reason of controlling natural causes must use, is the currency to which the power and the duty of the government must apply. Whether it be made of paper, or leather, or iron, or gold and silver, or any other material, it is money if the people do and must use it as money; and the government must use it too, and create it and regulate its value, or be shorn of an essential prerogative and fail in the performance of an important duty. Had our Constitution omitted entirely a grant of power over money, the power must have been implied; for without it the government would have been unable to perform any of its functions. But the power was not withheld,—it was given, though in language which confines it to one sort of money only, coin,—while, in process of time, it has happened that paper money has become practically that which, far more largely than coin, both the people and the government must use.

The restriction implied in the language of the Constitution refers, not to the power, but to the

mode in which it is to be exercised. Now, the power is the principal thing, the manner of using it subordinate;—the first is permanent, the second changeable; the first substance, the second attribute; the first essence, the second accident. Therefore, if one of the two must be sacrificed, the second must yield to the first; for without the first, the government is wholly impotent either for its own preservation or the well-being of the people. The truth of this reasoning will be more apparent if we suppose the intention of the Constitution, according to the doctrine of the narrow school, to prohibit the use of paper money altogether to have been actually carried out,—that there were no bills of credit emitted either by the States or the general government, and no bank notes. It might become physically impossible for the government to *coin* money. It is supposable that mines may yet be discovered in California or elsewhere so rich as to render gold and silver too plentiful and cheap to be used as money. Should they become as cheap as iron, they would be useless as instruments of exchange. Or they might become so scarce as to be valueless for currency; or they might disappear altogether, as they have done now. Should the government coin them,

they would instantly vanish. They would fly, as they have flown, into brokers' chests, bank vaults, behind the wainscots, under the hearths, into stockings and old coffee-pots of farm-houses. Should it become, or if it now be, *impossible* for the government to "coin money," while yet it is possible for it to create and regulate the value of money which the people do use and must use, is it not absurd to say that such a physical impossibility destroys the power? that, because the power cannot be exercised in one specified way, it cannot be exercised at all, though another way, equally beneficial, be open? that we who now own the Constitution must relinquish the advantages of a necessary power, out of superstitious regard to a restriction which time has shown to be useless and unwise? Surely this reasoning would be unworthy even of a *pie poudre* court.

The Bank of the United States was established, not merely to perform the duties of a fiscal agent for the government, but to furnish a sound and uniform currency to the people. Such a currency, it was argued, was necessary to commerce, and the power to supply it was therefore incident to the power granted by the Constitution to regulate commerce. Thus the

limiting effect of the letter of the law, "to coin money," was avoided. But this reasoning does injustice to the subject. Power over *money*, whatever its form, if it be really the money of the country, is one of the substantive powers of the government, essential to its action, and is not incidental to any other power, except in the sense that all the powers of government are mutually assisting and supporting and necessary to each other. The people must have a currency, but they cannot themselves make one and regulate its value; therefore the government must do it. Neither can they make and execute laws, lay and collect taxes, administer justice, hold intercourse with foreign nations, carry on war, etc., and therefore these are the functions of government. The power to create and control money is just as essential, and was therefore granted in the Constitution. Without it, most of the other powers would be useless, and its own special objects could not be attained. In truth, this division of powers is artificial. Government is a unit, is an individual, with a will, a conscience, thoughts, purposes, ends to attain, ability to act; and, as when a man thinks, desires, wills, plans, labors, eats, walks, runs, or fights, it is the vital force of the man acting in

these different ways, not several distinct faculties of action; so when a government makes laws, imposes taxes, declares war, borrows money, coins money, etc., it is not separate powers to do these things, each moved by a jerk of its own string, that are acting, but the supreme power of the people intrusted to the government which thus exerts itself, in various directions and forms, as occasion requires. Unfettered action within its legitimate province—in other words, sovereign power for the accomplishment of its proper ends—must belong to every government, or it must fail, and failure by government to perform any of its functions means public disaster. The Constitution gave to ours the money power, and withheld it from the States, because it belonged legitimately to the former, and not to the latter. The narrow school of constructionists have reversed the plan of the Constitution. They have given the money power to the States, and denied it to the nation, with what results we have already described.

What, then, is the authority vested by the Constitution in the government? The answer is, All that is necessary to maintain the system the Constitution meant to establish; namely, a great

republican empire, with a central power surrounded by local powers, each acting in its appropriate sphere. Whatever is consistent with this system is granted, whatever inconsistent withheld, whether expressly mentioned or not.

It is absurd to say that the Constitution intended to grant less power to the government than is necessary for its preservation and for the accomplishment of the objects for which it was created. Therefore, as Judge Hare has well expressed it, while Congress cannot pass laws for ends not permitted by the Constitution, the Constitution should be so read as not to prevent the failure of the end for which it was made.

It is assumed in the foregoing argument, that the language of the Constitution conferring on Congress power "to *coin* money and regulate the value thereof," confined the power to the creation of metallic money and was meant to prohibit paper money issued by the government, so that, as the States were forbidden to emit bills of credit, gold and silver coin was intended to constitute the only currency of the future nation. This strong inference is drawn less from the words of the law than from the discussions in the Convention about the law when it was

made. These discussions have their value. They reveal the dominant opinions and sentiments which governed the Convention, and are a guide to enable us to discover the intention of the founders. They are entitled to respect; but they are not authority, nor were they deemed such by the Convention. The law itself is the result of the conflicting views, the careful deliberation, the ultimate convictions, after debate, of a majority of the members; and the law alone is the legitimate expression of those convictions, not the debates. Moreover, the law does not belong to those who made it, or to those who ratified it in 1787, but to us; and any fair interpretation of it that suits our needs is a legitimate interpretation, although it may differ from the opinions expressed in the debates.

Looking, then, only to the Constitution itself, what power over the currency does it confer on the general government?

Sovereign power over the money of a nation, as a general rule, belongs to all governments. It is fair to infer, therefore, that a departure from this universal rule, if intended, would have been expressly stated. But the restriction in question is not expressed, but implied from the language of the law. Congress shall have



power "to coin money," that is, to stamp certain marks on pieces of metal, by which they become money. Undoubtedly that is the true meaning of the words, and such is the power granted, and it has been constantly and now is exercised by the government. But why may not the government also create and regulate the value of a paper currency? Paper and coin circulate together; why may not power over each exist and regulate both? Because it is not expressly granted, is the reply. But it is not inconsistent with that which is granted, nor is it prohibited,\* and it is a power that belongs to every other government under the sun. Restrictions on power, which do distinguish our government, are all expressly mentioned in the Constitution: they are restrictions either on the general government, or on those of the States, or on both. Powers denied to both are such as were deemed inconsistent with republican liberty or a republican form of government: as to pass bills of attainder, *ex post facto* laws, or to grant titles of nobility. Those prohibited to the States only, are such as would trench upon national interests,

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\* The Convention refused to *prohibit* the power. See opinion of Judge Davies, in *Opinions of the New York Court of Appeals*, referred to above, p. 25.

which are exclusively the province of the general government; as, to enter into any treaty of alliance or confederation, to grant letters of marque and reprisal, to coin money, to emit bills of credit, to make anything but gold and silver a tender in payment of debts, to pass laws impairing the obligation of contracts, to engage in war, etc. These powers belong of necessity to every national government. They are, therefore, in our system, denied to the State governments, because they are not national, but act only upon local interests. It would seem to follow that for this very reason they belong to the general government, unless expressly prohibited. The States are forbidden to pass a law impairing the obligation of contracts. Why? Because such laws would interfere with contracts made between citizens of different States. But Congress can pass such a law. Why? Because, among other reasons, the power is necessary to establish a bankrupt law, uniform in all the States. In like manner, the States are forbidden to emit bills of credit, or make anything but gold and silver a legal tender. Why? Because such powers are inconsistent with a uniform national currency, which it is the duty of the government to provide, which all other governments have

authority to provide. There would be as many currencies as States, did the States possess these powers, and debts might be legally paid in the currency of one State, which would be worthless to creditors in another; and thus one benefit of the union, of nationality,—easy commercial intercourse,—would be injured or destroyed. But bills of credit issued by the general government would be the currency of the nation, and, if they were made a legal tender, would be such in all the States. Why, then, may not these powers be implied also because they are not prohibited, since they are in harmony with all other powers of the general government? Authority to coin money is indeed expressly given, because the precious metals are the ultimate basis of all money, and because to coin them is the usual and regular mode in which the power of government has always been and is generally exerted. To emit bills of credit, and to make them a legal tender, are exceptional acts, resorted to as an expedient to meet a temporary difficulty. They were forbidden to the States for reasons already given, but these reasons do not apply to the general government, and the inference is that the prohibition does not. Looking, therefore, to the language of the Constitution, and to the sys-

tem it was intended to establish, the conclusion is obvious, that Congress has power to emit bills of credit, and to make paper money a legal tender, because that power is prohibited to the States, and not to Congress.

This argument places the power to create a national bank, or a system of national banks, such as Mr. Chase has established, and an exclusive national currency, such as he proposes to create, or to issue legal-tender notes, on higher ground than to regard it as incidental to the war power, or to the power to regulate commerce or to collect taxes. The power to make and regulate a national currency must belong to the nation, or there can be no national currency. It is expressly granted as to metallic money, and that is the basis of all money. The precious metals support a paper currency, and they alone can give it value. Can government have power over the support, and not over the thing supported,—over a cause, and not over its effects? Congress can coin money. When it does so, immediately follows a train of consequences in the shape of paper money, so vast in their influence that they affect the well-being of every individual in the nation. But with these results of its own action, we are told, Congress has no con-

cern, and cannot control them, however disastrous they may be, although the States may control them, each in its own way, and by action without concert or system, convert into an instrument of evil what, properly managed, would be the source of universal benefit. Every argument which proves that Congress must have power to coin money, proves also that it must have power over paper money; for the one is the offspring of the other, and they are inseparable companions. The reasoning which proves that power to coin money or emit bills of credit should be denied to the States, proves also that power to do both should belong to the general government. The two powers cannot coexist in the Federal and State governments without destructive confusion, but they may coexist in the national government, and the result of their harmonious action will be financial security and order. Our experience with a national bank shows this, as does also the history of the Bank of England.

The government can in no way so entirely control the paper currency, which is the inseparable consequence of its action in coining money, as by issuing its own notes. For the security of such notes, and their convertibility into coin, the

faith of the government and the whole of its resources would be pledged, and they would necessarily be received in payment for taxes and all debts due to the government. Higher security than this no paper money can have, provided always that the government be solvent, and its authority established. They would, therefore, command universal credit, and be of uniform value throughout the nation; and these are the essential attributes of a national currency. They would displace the notes of State banks, and prevent the evils which, as we have already stated, State banks have caused. The government notes might, without injustice or inconvenience, be made a legal tender, should temporary necessity require such a measure, because their value would be the same in all the States.

The power to issue such notes is not inconsistent with the power to coin money. Both may be, and have been, exercised by our government at the same time. Neither is the power to make such notes, as well as gold and silver, a legal tender, inconsistent with the power to coin money, or forbidden in the Constitution. The States, not the general government, are prohibited from making anything but gold and silver a legal tender. No express power is granted to

the government to make any sort of money a legal tender, yet it is a power which government must and does possess. It possesses the power, therefore, without limitation. It may exercise it with regard to its own notes, yet gold and silver may still remain a legal tender, as they now are. The two kinds of currency may advantageously circulate together, as coin and bank notes have done heretofore. Government notes, in the normal condition of the country, would be at par with gold and silver, and far more convenient for the purposes of business. They would, therefore, practically be made a legal tender by the custom of business, as bank notes were before the war. They would also become so during war, if there were no bank notes, for there would be no gold and silver, and money of some sort the people must have. Government, therefore, by exercising its power, would be giving legal sanction to what custom proves to be necessary, would prevent unfair advantages by either debtors or creditors, and, while it maintained its own credit, would enhance the value of the currency in the hands of the people.

A word more as to the presumed intention of the founders to make gold and silver the only currency of the nation. Notwithstanding the

evidence of the debates, and granting to it all the force claimed, it is unjust to impute to our fathers any such design. Why did they refuse to invest Congress with power to create a paper currency? Was it not because, from recent experience, they thought a paper currency dangerous, while they knew that a metallic currency was safe? What they really intended, therefore, was to provide against a dangerous paper currency, not against a safe one. The country was suffering from the losses caused by the unredeemed Continental money, and from the irredeemable bills of credit issued by the States. It was exhausted by a long war, its great resources were undeveloped and unknown, the vast regions of fertility since added to its domain a *terra incognita*, capital was scarce, and commerce in its infancy. The nation as it now stands, even without the rebellious States,—its intelligent and energetic millions, its great cities, its gigantic agriculture, its foreign and domestic trade, its steamers and railroads and telegraphs,—is a result which the sober judgment of 1787 could not have predicted, nor could the most creative imagination have painted such a vision of power and grandeur. Could the founders have foreseen it,—could they have foreseen, also, that



commercial credit and its offspring, paper currency, were the chief instruments that caused this wonderful outgrowth of prosperity; that this currency was to become something very different from Continental money; that it was a machine whose powers were destined to work miracles in every branch of industry; that it would become almost the only money used, and indispensable to all business; that its nature was to be dangerous in ignorant hands, but safe as beneficent when skillfully managed;—could all this have been revealed to the framers, is it conceivable that they would have done what Judge Sharswood says they meant to do,—“exclude forever, in any possible case, the possibility of paper money”? No, it is not conceivable, even though they said so themselves; and unless they said so expressly in the Constitution, their opinions, founded in necessary human ignorance of the future, do not bind us. Mere justice to their memory should induce us to disregard intentions or opinions which we know would not have been theirs, could they have seen with our eyes or beheld the light which now shines with mid-day clearness, but which, when they worked anxiously for us, was below the horizon. It dishonors their illustrious names to impute to them

folly or absurdity, and surely no folly or absurdity can be greater than the attempt to limit the business of this country to the use of a metallic currency, or to declare that what is necessarily the money of the people must not be regulated by the government of the people. Doubtless, when the framers declared that Congress should have power to "provide and maintain a navy," and to "establish post-roads," they "intended" that the navy should consist of wooden sailing vessels, and that the post-roads should be turnpike-roads. These were the only sort of ships and the only sort of roads they knew anything about. Let us suppose that in 1787 the power of steam as a mechanical force had been first discovered; that rude experiments had been made to apply this novel force to propel boats on water and cars on land, which had been unsuccessful, causing disastrous explosions and loss of life. Steam would, no doubt, have inspired universal dread; and we can imagine that, under its influence, the Convention might have inserted in the Constitution, that ships of war should forever be moved by sails and the mails carried on turnpike-roads in four-horse coaches. Would such a declaration bind us? Had it been made, would it have prevented iron-clad steamers for

our navy, and railways for our post-roads? Such are the arguments of the narrow school. They reason clearly enough from their petty premises and within their little sphere, but the conclusions they reach are absurd. One is tempted to ask them, in the language of a Spartan chief, "Why do you speak so much to the purpose of that which is nothing to the purpose?"

If the foregoing reasoning be correct, it proves that our Federal government, like every other government, must have, and by the Constitution has, power to create for its own use and that of the people an exclusive national currency, and that this power was granted by its founders when they gave it authority to "coin money," and denied to the States either the privilege to do that or to emit bills of credit. We have endeavored to show also that, because of a false and narrow interpretation of the Constitution, the design of its makers has been defeated, and power over the money of the nation has been practically given to the States, and denied to the general government. As a consequence, the money forced upon the government and upon the people has been the paper currency of numerous banks, of every variety of management and responsibility, causing from the begin-

ning infinite mischief to business by periodical suspensions, and frequent embarrassment and loss to the treasury. A remedy for these evils was twice sought and found in a national bank, established notwithstanding the violent opposition of the narrow school, and finally destroyed by that school. At length has come a great civil war, testing, by its stern necessities, the value of our political system and the force and character of our people.

Difficult emergencies reveal truth, and this war is teaching us many valuable lessons. Among them is the principle that a national currency is essential to the people, and that it can be created and maintained only by the supreme power of the nation. This truth is in the Constitution, but it has not been recognized either by our law or our practice. Neither Bank of the United States was founded on this truth, but, as already stated, the right to charter it was claimed, not as the exercise of the inherent, essential, and constitutional power of government over currency, but of a power subordinate and incidental to the authority to regulate commerce, it being a means "necessary and proper" for that purpose. The legitimate power of the government was therefore timidly and partially exerted, when

it successively established those banks. It did not venture to control the currency directly, or to give it, by its own action, security and uniformity. The government did not attempt to make an *exclusive* national currency. State rights and the narrow school would have bristled in angry resistance to such a scheme. The national bank issued its own notes, on its own security, and the government had no power either to prevent an excessive issue or to provide for their redemption in coin. The State banks continued as before to issue their notes, and the control so beneficially exercised over these by the national bank was not official authority, but the result of its large capital, of its skillful management, and of its commanding position as the fiscal agent of the government.

These influences, however, did in fact restrain the local banks, while they gave to the notes of the national bank a credit so high, that they were everywhere and always at par with gold and silver, and often above par. Such were the effects of even a partial execution of the plan of the Constitution. This slight infusion of national power sufficed to create a good currency. The design of the Constitution was, to render the money created by the government exclu-

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sively the money of the nation, by prohibiting State money altogether. This the Bank of the United States could not do, but what it did to some extent carried out that design. The credit it derived from the government made its notes a uniform currency for the nation, and enabled it so to control the State banks that their notes became also safe and sound, though this result was not immediately obtained, nor without much difficulty.

Had a national bank, ably and honestly managed, been in existence when the present war broke out, the government would have had no difficulty for want of a currency. It would not have been obliged first to create money and then to borrow it, as Mr. Chase has done with such distinguished success; but it would have been obliged to exercise a more direct control over the bank, than, according to the narrow school, the Constitution permits. The government would have done, no doubt, what the English government did in its long war with France and Napoleon. It would have deposited its own bonds or notes with the bank as security for any currency required, authorized the bank to suspend specie payments, and made its notes a legal tender for debts, public and private. But we

had no national bank, and therefore the government was forced to issue its own notes.

This article has so far exceeded all reasonable limits, that we have no space left to do anything like justice to the system of a national currency planned by Mr. Chase and sanctioned by Congress. We believe it to be founded on true principles, both of finance and constitutional law,—principles whose commanding nature this war has made manifest. The demand for such a system became imperative under the stress of inexorable necessity, and fortunate indeed has it been for the country that the right man appeared at the right time and in the right place to meet that demand. At length, for the first time in its history, the national government has exerted the power and performed the duty confided to it by the Constitution. It has provided for the people and for itself a national currency. The system is intended to be permanent. The currency is meant to be exclusive of all other paper money, to be of uniform appearance and uniform value throughout the country. It is stamped with the impress of the government, attesting its national character, as coins are. It is issued by the government, not directly to the people, but to voluntary banking associations for circulation

among the people. Its convertibility into coin, in the normal condition of the country, or into lawful money when there is no coin, is secured by a deposit of government stocks of sufficient value with the treasury, and by being made redeemable by the treasury. The faith of the nation is pledged to the holders of the notes.

Their uniform value being thus provided for, the next object was to render them, together with coin, issued also by the government, the exclusive currency of the nation. State banks are too firmly rooted in the habits and too strongly supported by the sentiments of the people to be abolished by a mere act of authority. Sudden change would be injurious to the business of the country and to the interests immediately connected with these banks. Mr. Chase therefore proposes the gradual substitution of the national institutions for the State banks, to be accomplished by a moderate tax on their circulation, by offering them inducements to become themselves receivers and distributors of the national currency, and by imparting to that currency a value so superior that it will be universally preferred, and take the place of all other.

Such a currency, if the scheme be successfully carried out, will be national, because it will be

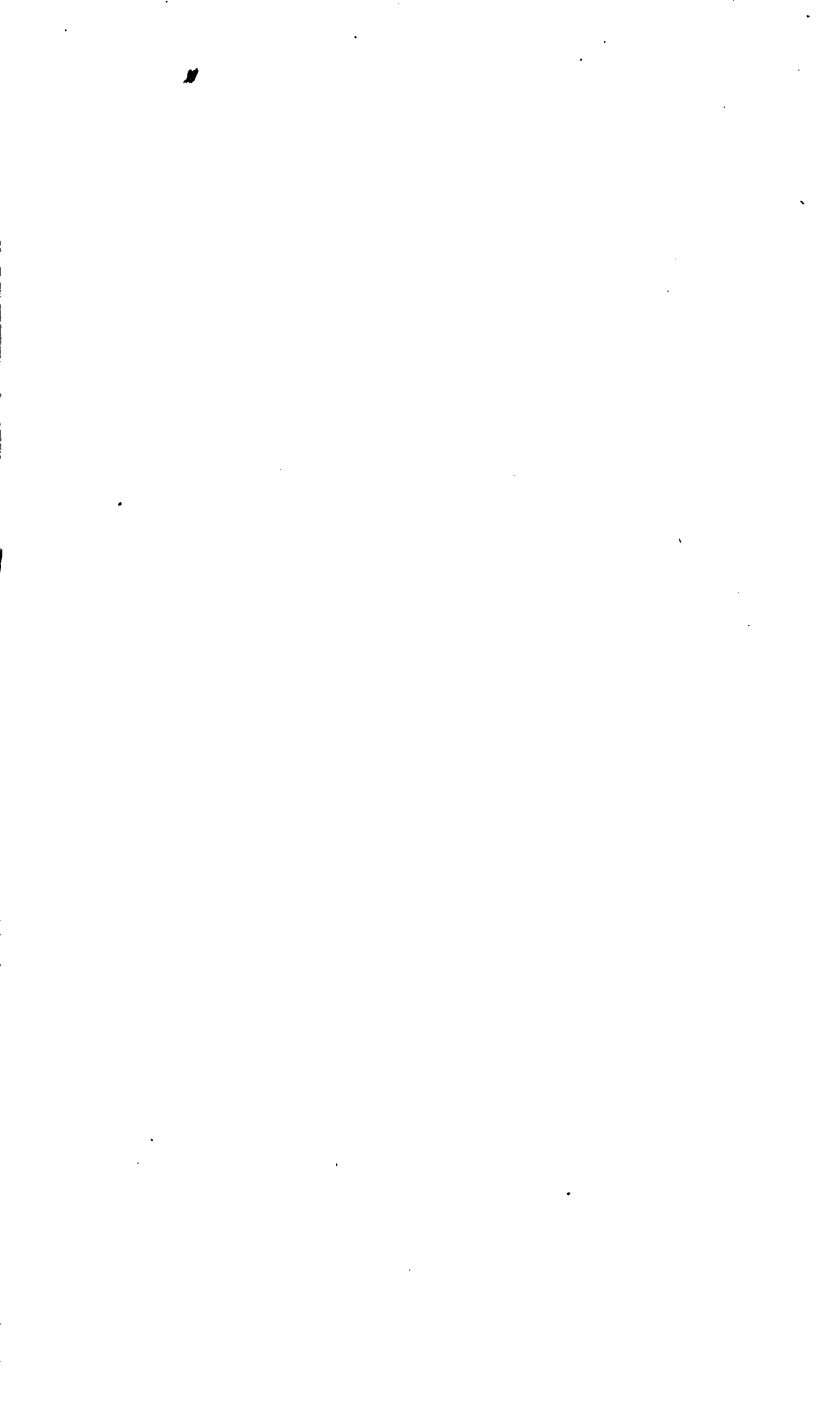


exclusive and controlled by the national authority; it will be safe and of uniform value everywhere, because supported by the wealth, the faith, and the power of the nation. It will therefore have every attribute of good money, which the Constitution intended to provide, and be free from all the evils of State paper money, which the Constitution intended to prevent.

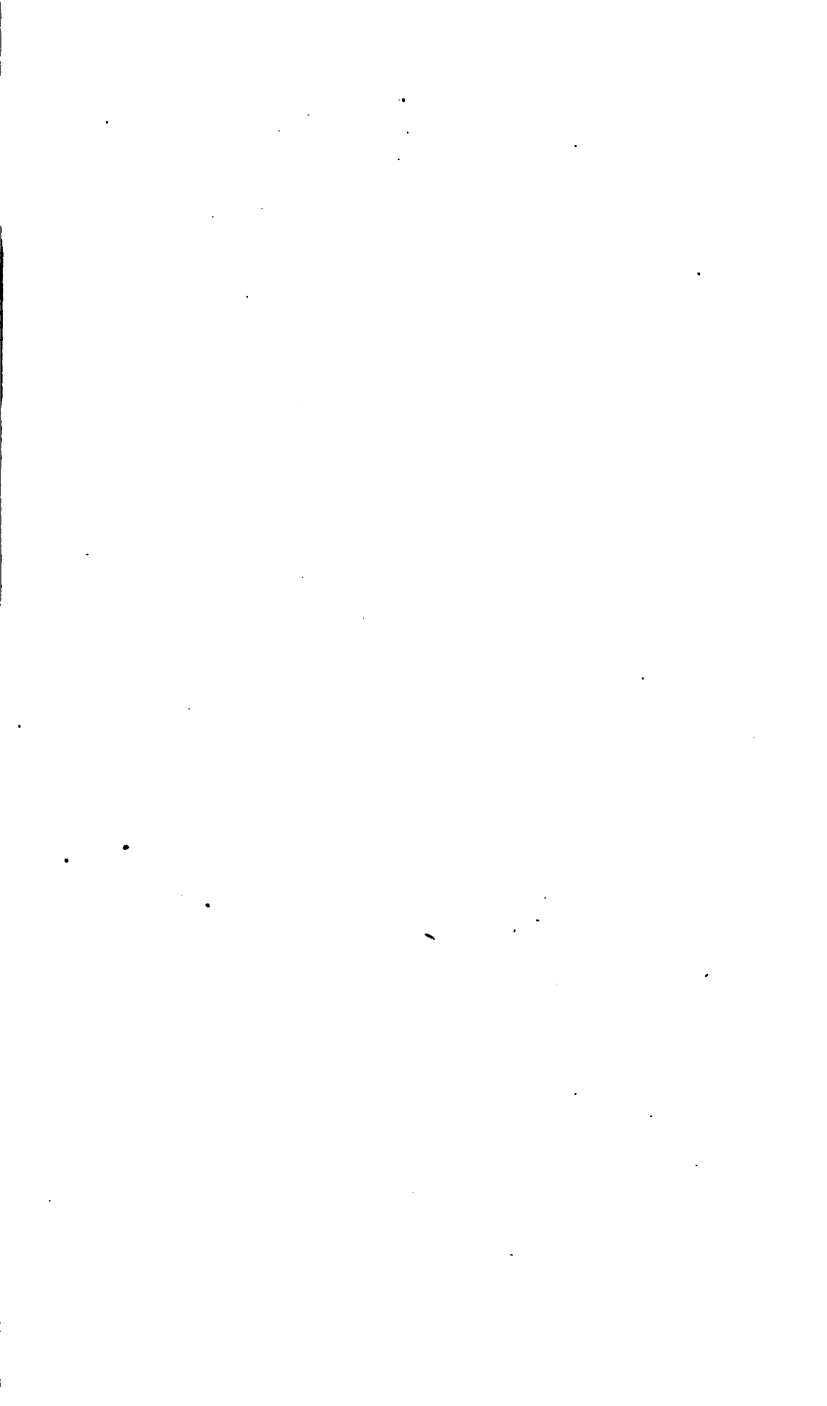
We discuss now merely the principles on which this national system is founded. Its success in practice will depend on the wisdom of its details and on the ability with which it is managed. A great point was gained, and the truth of the Constitution vindicated, when Congress asserted its power over the currency by establishing this system and by issuing the legal-tender notes. Both have been gladly accepted by the people. So far, they have perfectly accomplished their purpose. They have poured into the treasury ample means to prosecute a gigantic war, and covered the country with the prosperity of peace in the midst of war. In connection with Mr. Chase's admirable plan of borrowing money directly from the people, and from all classes of the people, they have strengthened the ties which bind the people to the government. Volunteer soldiers fill our armies, volunteer

loans fill our treasury. The government receives taxes with one hand and pays them as interests to tax-payers with the other. The people, as owners of the debt created by the war, and as holders of the notes secured by that debt, have a double motive for supporting the government, by which alone it can be paid. In every sense, the war is made by the people and for the people, and the ability of Mr. Chase has so contrived it that the very evils of the war—debt and taxation—have multiplied the motives for carrying it on to a successful issue, by adding to the interests staked upon success. Let the Union be restored, and both the debt and currency will be safe. Things more valuable also will be saved, and such a future of prosperity and power be opened to the country, that ere long the great war will be remembered only for the blessings it has brought, the wisdom it has taught, and the glorious memories it has bequeathed.







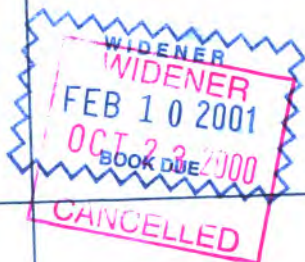




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